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In the Supreme Court of the United States

OCTOBER TERM, 1963.

No. 865.

LESLIE BROWN, BERNARD WEISS, ALBERT WOHL,
Individually and as a Partnership,
Petitioners,

vs.

THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE
OF CUYAHOGA COUNTY, OHIO,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION.

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OPINIONS BELOW.

Except for the opinion of the Supreme Court of Ohio which is reported in 175 Ohio State 149, 192 N. E. (2d) 54, the opinions of the various courts are unreported. They are, however, made a part of the appendix to the petition for a writ of certiorari to which this brief in opposition is directed.

JURISDICTION.

The claim for jurisdiction is set forth in the petition. However, it should be noted that at no time during the trial of this matter, or through the appellate procedure, did the petitioners assert or raise a federal question.

The first attempt to inject a federal question into this proceeding was in the application for rehearing filed in the Supreme Court of Ohio (Petition, p. 65), and then only in the most general language. The order denying the applica-

tion for rehearing (Petition, p. 67) makes it clear that the court did not entertain the application or decide the question, being content to rest its decision on State grounds. The application did not warrant a formal hearing and was denied without briefs or argument.

QUESTION PRESENTED.

Whether the Supreme Court of Ohio has the right to prohibit the performance of legal services for others by persons not licensed by it to engage in the practice of law.

STATEMENT.

On April 3, 1961 the Court of Common Pleas of Cuyahoga County, Ohio appointed a committee consisting of lawyers admitted to the practice of law in Ohio to investigate the unauthorized practice of law in Cuyahoga County. The committee did investigate the activities of the petitioners pursuant to that appointment.

The investigation, and the evidence, revealed that three laymen, a used automobile dealer who was also a furniture store operator and house-to-house canvasser, and a food broker, went into the business of representing claimants for compensation before the Bureau of Workmen's Compensation and the Industrial Commission of Ohio. They began business in 1958.

None of the three, who operated under the partnership name of Brown, Weiss and Wohl, are licensed to practice law.

As their volume of business increased—and it did increase to the point where in 1961 the office had over 600 claims pending and the projected gross income in fees collected on a contingent basis in 1961 neared the $80,000 mark—one or two other laymen were hired to represent

claimants for compensation. One of these left his job in a drugstore to join the business being conducted by the Petitioners. As a part of their operations the partners also hired a Columbus lawyer on a fixed retainer basis who helped the partnership render services for its customers.

The committee appointed by the Court of Common Pleas of Cuyahoga County to investigate the unauthorized practice of law filed the original action to enjoin the activities of these non-lawyers. The services which the committee claimed the partnership performed for its customers were set forth in detail in the application. (Deleted in the petition here but set out at pages 1-6 of Record from Ohio Supreme Court.)

In the answer to the injunction request, the partnership admitted the performance of all of these legal services. However, the partners claimed they were permitted by the Industrial Commission to render such services and further, that the Industrial Commission has exclusive authority to determine who can represent claimants and employers in matters arising under the Workmen's Compensation Law. (Pages 7-11 Ohio Supreme Court Record.)

It is interesting to note that the evidence in the instant case reveals Brown, Weiss and Wohl had forwarded cases to Fleck & Fleck, who were then Attorneys at Law and that when disbarment proceedings were instituted against Fleck & Fleck, Brown, Weiss and Wohl went into business for themselves. This Court is familiar with the *Fleck* case. See *Cleveland Bar Association vs. Fleck*, 172 Ohio State 467. (Certiorari denied, 369 U. S. 861.)

The judgment of the Court of Common Pleas was that services rendered by the partnership for others were legal services saying that:

"the practice of law is not limited to the conduct of

cases in court, but embraces the preparation of forms incident to actions and such proceedings, and the management of those actions and proceedings on behalf of clients and in general all advice and counsel to clients and all action taken by them for clients in matters connected with the law." (Pet. Brief p. 29.)

The Court then enjoined Brown, Weiss and Wohl from further performance of their services for their customers.

The judgment of the Court of Common Pleas was affirmed by the unanimous decision of the Court of Appeals of Cuyahoga County.

The opinion written by Judge Skeel stated:

"The Industrial Commission cannot authorize (by rule) the doing of an act which is contrary to law. It cannot permit or authorize by license a layman, not admitted to the bar, to practice law. The right to discipline lawyers and those unlawfully attempting to practice law is a natural right of the courts and such right cannot be invaded by a non judicial agency or by one which is permitted to exercise limited or quasi judicial power in a limited or restricted field."

The court further noted the decision of *West Virginia State Bar vs. Earley* (1959), 144 W. Va. 504, 109 S. E. 2d 420:

"The justification for excluding from the practice of law persons who are not admitted to the bar and for limiting and restricting such practice to licensed members of the legal profession is not the protection of the members of the bar from competition or the creation of a monopoly for the members of the legal profession, but is instead *the protection of the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the judicial department of the government could exercise slight or no control.*" (Emphasis added.)

As heretofore noted, throughout the trial and appellate procedures no federal question was asserted by the petitioners. Following the decision of the Supreme Court of Ohio, through new and different counsel, the petitioners filed an application for rehearing in which an attempt was made for the first time to inject a federal question into the case (p. 65, Petition). This application for rehearing was not granted (p. 67).

REASONS FOR DENIAL OF THE WRIT.

The basic question involved in this case is the right of the Supreme Court of the State of Ohio to determine who can or who cannot engage in the practice of law before state courts and state administrative agencies.

(a) Jurisdiction.

At the outset we would assert that the petitioners have failed to meet this Court's jurisdictional requirement of raising substantial federal questions in the state courts. We suggest that the attempt to raise the question for the first time in an application for rehearing, an application not allowed or considered, is not timely. *Radio Station W. O. W. v. Johnson*, 326 U. S. 120, 128; *Hanson v. Denckla*, 357 U. S. 235, 243-4; *Herndon v. Georgia*, 295 U. S. 441, 443; *Healy v. Ratta*, 292 U. S. 263, 270.

It is beyond dispute that the judgment of the Supreme Court of Ohio was based on non-federal grounds and that the non-federal grounds upon which the judgment of the Supreme Court of Ohio was based are adequate to support that judgment.

This being true, even if a federal question had been timely raised, the petitioners would not be entitled to the writ sought. In *Radio Station W. O. W. vs. Johnson, supra,*

the court, at page 129, in addressing itself to the question of jurisdiction, said it was the settled rule:

> "whereby this court will not review a state court decision resting on an adequate and independent non-federal ground even though the state court may have also summoned to its support an erroneous view of federal law."

(b) Practice of Law Within State Control.

We do not ignore the multiplicity of questions set out in the petition simply because of our inability to fathom their meaning and/or their relationship to the jurisdiction of this Court so far as it concerns state court decisions based on state rather than federal law. We do so primarily because all of the questions, in the final analysis, resolve into a single inquiry.

This is whether the courts of a State have the right to determine what services rendered for others constitute the practice of law and the right to determine whether the practice of law before the courts and administrative agencies of the State should be limited to those authorized by the State to engage in the practice of law.

At this late stage the petitioners seem to be saying that because the decision of the Supreme Court of Ohio does not prohibit others rendering similar services in the capacity of salaried employees of employers and/or labor unions they, the petitioners, are denied equal protection of law.

The Ohio court carefully confined its decision to the record before it and purposely avoided generalizations not supported by the record. It looked only to the services rendered by the petitioners and found that these services were the practice of law. On this point the court said (pp. 61-62 Petition):

"There is, therefore, a substantial danger that reasons given by this court for its decision in this case may be interpreted as prejudging controversies which may later arise in determining whether other kinds of conduct not in or related to court cases amount to the practice of law. Thus, the briefs filed in this case on behalf of amici curiae emphasize how important it is that this court should avoid broad generalizations in giving its reasons for holding that what the respondents did in the instant case amounted to the practice of law.

"The findings of the trial court and the record fully sustain the conclusions that each respondent in the instant case held himself out as being qualified to render advice to those who might have claims for compensation arising under the Workmen's Compensation Laws of Ohio and as being able to render services in the preparation and presentation of such claims, that each respondent did render such advice and such services, and that a fee was to be directly received from or charged against one having such a claim for workmen's compensation for such advice or services with respect to his claim."

In Ohio the judicial power is vested in the courts by virtue of Section 1 of Article IV of the Constitution of Ohio. As pointed out in the opinion in this case (Petition, p. 60) the Supreme Court of Ohio has inherent power to regulate, control and define the practice of law.

The control over the practice of law by the various states within their respective jurisdiction has always been recognized by this Court.

"In the exercise of their inherent power, the courts may supervise, regulate and control the practice of law by duly authorized attorneys and prevent the unauthorized practice of law by any person, agency or corporation."

See *People ex rel., Chicago Bar Association vs. Goodman*, 366 Ill. 346, 8 N. E. 2d 941 (*certiorari denied*, 302 U. S. 728, 82 L. Ed. 562, 58 Supreme Court 49); 111 *A. L. R.* 1; *In re Baker*, 8 N. J. 321, 85 A. 2d 505.

Vol. 7 of *American Jurisprudence* 2d, page 44, Section 2, states:

> "the practice of law is so intimately connected with the exercise of judicial power in the administration of justice that the right to define and regulate the practice naturally and logically belongs to the Judicial Department of the *state government*." (Emphasis added.)

The only exceptions to the foregoing rule are those cases where, in the exercise of the authority to control the practice of law, States have invaded rights accorded to individuals under the Federal Constitution or crossed over into area pre-empted by federal law such as in *The Florida Bar v. Sperry*, 373 U. S. 379 (1963). In *Sperry* the Court, speaking through Chief Justice Warren, recognized that in the absence of federal legislation, the States have a substantial interest in regulating the practice of law within the State and could validly prohibit non-lawyers from engaging in the practice of law.

CONCLUSION.

We earnestly suggest that the petition for a writ of certiorari should be denied because:

1. The court's jurisdiction is not properly invoked by reason of the failure of the petitioners to raise substantial federal questions in the Ohio courts.

2. The judgment sought to be reviewed in this Court was based on non-federal grounds which were adequate to support that judgment.

3. In exercising its control over the practice of law in Ohio, the courts of that State did not act in an arbitrary or discriminatory manner.

Respectfully submitted,

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